

REMARKS

Applicant submits this Reply to the final Office Action mailed June 1, 2007. By this Reply, Applicant proposes to amend claims 1, 27, 32, and 33, add new claims 34-42, and cancel claims 4, 7-9, 11-17, 30, and 31. Accordingly, upon entry of this Reply, claims 1-3, 5, 6, 18-29, and 32-42 will be pending in this application. The originally-filed application fully supports the subject matter of amended claims 1, 9, 17, 27, 32, and 33 and new claims 34-42. Thus, the Reply introduces no new matter.

As an initial matter, Applicant thanks the Examiner for indicating allowable subject matter in claims 4, 8, 9, 11-26, 31, 32, and new proposed claim 34, and for indicating that the proposed amendments presented in the first Reply to the final Office Action would overcome the Section 112 and 101 rejections. The proposed amendments presented in this Reply are consistent with the prior proposed amendments.

In the Office Action, claims 1-9, 11-26, and 33 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically the Office Action states that "[i]n claim 1 line 8-9 'actuatable hydraulic control having at least one control output associated with a mode of operation of the hydrostatic transmission' is confusing." Office Action at 2-3. Applicant has appropriately amended claims 1 and 33. The Office Action further states that "[i]n claim 17 line 3 'the distributor pilot line' is confusing, since there is only a 'first pilot line' of the directional on-off valve." *Id.* at 3. Applicant has canceled claim 17. Applicant thanks the Examiner for indicating the amendments would overcome the rejections (Advisory Action at 2) and respectfully requests withdrawal of the 35 U.S.C. § 112, second paragraph, rejections.

In the Office Action, claims 2, 3, and 33 were rejected under 35 U.S.C. § 101 “as claiming the same invention as that of claims 4; and 34, respectively of U.S. Patent No. 7,003,948” (“the ‘948 patent”). Office Action at 3. Applicant has amended independent claim 1, from which claims 2 and 3 depend. Applicant submits that claims 2, 3, and 33 do not claim the same invention as claims 4 and 34 of the ‘948 patent. Applicant thanks the Examiner for indicating the amendment would overcome the rejection (Advisory Action at 2) and accordingly, requests withdrawal of the 35 U.S.C. § 101 rejection.

In the Office Action, claims 1, 5-7, and 27-29 were rejected under 35 U.S.C. § 102(b) as being anticipated by German Patent DE 4405472 (“DE ‘472”); and claims 2 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over DE ‘472 in view of U.S. Patent No. 3,997,017 to Campbell et al. (“Campbell”), U.S. Patent No. 3,788,075 to Holdeman et al. (“Holdeman”), and U.S. Patent No. 3,458,005 to Malm et al. (“Malm”). Applicant respectfully traverses these rejections for the reasons provided below.

Applicant has amended independent claim 1 to include subject matter of allowable claim 4, now canceled. Accordingly, claim 1 and its dependent claims 2, 3, 5, 6, and 18-26 are allowable over the cited references. Withdrawal of the 35 U.S.C. 102(b) rejection is respectfully requested.

Applicant has amended independent claim 27 to include subject matter of claim 30 and allowable claim 31, now canceled. Accordingly, claim 27 and its dependent claims 28, 29, 32, and 33 are allowable over the cited references. Withdrawal of the 35 U.S.C. 102(b) (or 35 U.S.C. 103(a)) rejection is respectfully requested.

Applicant submits that new claims 34-42 are allowable over the cited references. For example, Applicant presented new independent claim 34 in the first Reply to final Office Action and the Examiner indicates in the Advisory Action that claim 34 would be allowable if separately submitted. In addition, dependent claim 35 recites subject matter contained in allowable claim 9, now canceled. Dependent claim 36 recites subject matter contained in allowable claim 11, now canceled. Dependent claim 37 recites subject matter contained in allowable claim 12, now canceled. Dependent claim 38 recites subject matter contained in allowable claim 13, now canceled. Dependent claim 39 recites subject matter contained in allowable claim 14, now canceled. Dependent claim 40 recites subject matter contained in allowable claim 15, now canceled. Dependent claim 41 recites subject matter contained in allowable claim 16, now canceled. Dependent claim 42 recites subject matter contained in allowable claim 17, now canceled. Accordingly, new claim 34 and its dependent claims 35-42 are allowable over the cited references.

The Office Action contains characterizations of the claims and the related art with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

In discussing the specification, claims, and drawings in this Reply, it is to be understood that Applicant is in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification or abstract and/or shown in the drawings. Rather, Applicant is entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

Applicant respectfully requests that this Reply under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1-3, 5, 6, 18-29, and 32-42 in condition for allowance. Applicant submits that the proposed amendment of claims 1, 27, 32, and 33, and new additional claims 34-42, do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Reply should allow for immediate action by the Examiner.

Finally, Applicant submits that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.



In view of the foregoing remarks, Applicant submits that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art reference cited against this application. Applicant therefore request the entry of this amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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